



8.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act (CEQA) was signed into law in 1970 (Public Resources Code, section 21000 et seq). Among its provisions, CEQA requires public agencies carrying out or approving a project to conduct an environmental analysis to determine if project impacts could have a significant effect on the environment. Typically, the agency having principal authority over a project is responsible for conducting the environmental analysis. Such agencies are referred to as *Lead Agencies*.

As a public agency, DTSC is subject to this environmental analysis requirement because it has approval authority over several types of discretionary permit projects, including the following:

- c Initial Permit Issuance
- c Permit Renewals
- c Permit Modifications
- c Closure Plans
- c Post Closure Plans
- c Variances

The environmental analysis required to be conducted by the public agency is called an *Initial Study*. The Initial Study serves to:

- c provide the Lead Agency with information to use as the basis for deciding whether to prepare an Environmental Impact Report (EIR) or a Negative Declaration (Neg Dec);
- c enable an applicant or the Lead Agency to modify a project, thus mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a Neg Dec;
- c assist the Lead Agency is preparing an EIR, if one is needed;
- c facilitate environmental assessment early in the design of a project;
- c provide documentation of the factual basis for the finding in a Neg Dec that a project will not have a significant effect upon the environment;
- c eliminate unnecessary EIRs; and
- c assist the Lead Agency in determining whether a previously prepared EIR or Neg Dec could be used with the project.

The Initial Study Process

The Initial Study process entails the use of a standardized Initial Study format containing a listing of various environmental media which must be analyzed for potential project impacts. The State CEQA Guidelines (Title 14, Code of Cal. Regs.; section 15000 et seq.) allow Lead Agencies the ability to develop and use their own Initial Study formats. The format used by DTSC as well as guidance for preparation of such packages is contained in the document entitled *Workbook for Conducting Initial Studies Under the California Environmental Quality Act*, DTSC, October 1996¹. In addition to this

¹ All DTSC Project Managers are expected to have their own copies of the latest CEQA guidance manual and related Management Memos.

standard format, DTSC utilizes a Special Initial Study format in cases where a project may be subject to an exemption to the filing fees required by the Department of Fish & Game under certain circumstances. This Special Initial Study format is contained in *Workbook for conducting Initial Studies Under the California Environmental Quality Act, DTSC, October 1996*. The Permit Advisory Number 97-4 advises DTSC permitting staff on how to properly inform a community during the Initial Study Process regarding environmental setting (see Appendix 8.0 for more detail). A flowchart showing the CEQA process is contained in Appendix 8.1.

Consistent with DTSC policy, all Initial Studies must be prepared in-house in order to ensure that DTSC, as Lead Agency, conducts an independent analysis to determine if a project may have a significant effect on the environment (EO-93-033-MM).

Permit Writer Compliance With CEQA

The following describes the CEQA steps the permit writer should take after a permit application has been submitted to DTSC.

Lead Agency Determination-

As discussed in [Chapter 2](#), the permit writer should contact the appropriate local land use agency to find out if the city or county will be acting as the CEQA Lead Agency for the project. Often, if a land use decision is to be made for a project, local government must comply with CEQA by preparing an Initial Study and subsequent environmental document. If this should be the case, the permit writer should inform the local agency of DTSC's role and responsibility over the project to ensure that the analysis of impacts includes those which may be associated with permitted activities being approved by DTSC. Coordination with local government up-front in this manner can avoid duplication of CEQA efforts and reduce the likelihood of project delays.

Incorporating DTSC's project into the local CEQA analysis will enable DTSC to use the local CEQA package to meet CEQA obligations, often with streamlined efficiency. For more information on the use of another agency's CEQA documentation, please contact the Office of Program Audits and Environmental Analyses (OPAEA), HQ. If the local agency is not preparing a CEQA analysis, it can then be assumed that DTSC will act as the Lead Agency under CEQA. In this case, the permit writer should contact the local planning agency to inform them of DTSC's intent to be the Lead Agency.

Review for Exemption-

If DTSC is acting in the Lead Agency role, the first step the permit writer must take is to determine if the project may be exempt from CEQA. To be exempt, the project must either be specifically exempt by statute, a listed categorical exemption or by the general rule that the project would have no potential to create a significant effect upon the environment. If a project is found to be exempt, the permit writer must prepare a Notice Of Exemption (NOE) and accompanying background information following the procedures identified in the document entitled Exemptions and Preparation of NOEs (EO-94-012-MM). The completed package must be sent to OPAEA for review and approval. Upon approval, OPAEA will file the NOE package with the State Clearing House (SCH) to initiate the 30 day legal challenge period.

Review for Mandatory Preparation of an EIR-

As discussed in [Chapter 2](#), if a project is not otherwise exempt under CEQA, the permit writer must then determine if a mandatory EIR would be required² for the project as required under the Public Resources

² Mandatory EIR required for: a new permit application for burning hazardous wastes; permit modification to increase the permitted capacity by more than 10 percent for the hazardous waste burner; a permit application for

Code, section 25151.1. The permit writer should examine this section to determine if an EIR will be required. If so, the permit writer should proceed with development of the EIR pursuant to guidance provided in EO-97-001-PP.

Conducting the Initial Study-

If the project is not otherwise exempt and it is not subject to the requirements for preparation of a mandatory EIR; the permit writer must begin preparation of an Initial Study. It is critical that the permit writer begin gathering information necessary for the assessment early in the planning process. Generally, this is done during the early phases of the permit application review stage. Using information found in the application, supporting studies, or other data, the permit writer should identify if any areas in the Initial Study have data gaps. If data gaps are found, the permit writer can obtain the missing information through the Notice of Deficiency process.

Since other agencies generally have overlapping jurisdiction over certain aspects of a permitting project, it is important that the permit writer contact representatives from these agencies to determine their regulatory roles and responsibilities. This information may be useful in addressing certain sections of the Initial Study that are of particular interest to these agencies. Inclusion of this information could prevent project delays and approvals.

When the Initial Study has been completed, the permit writer then must make a determination whether an EIR or Neg Dec should be prepared. If an EIR is required, the permit writer will initiate procedures in conjunction and coordination with OPAEA for preparation of an EIR by an outside consultant, as prescribed in EO-97-001-PP. If a Neg Dec is required, the permit writer will be required to prepare the draft document.

Once the draft Initial Study and appropriate environmental document (EIR or Neg Dec) have been prepared, the package is required to be sent to OPAEA for review and approval. The package should also contain a copy of the draft permit. Pursuant to DTSC policy, OPAEA is afforded 15 working days in which to review and provide comments on the CEQA package (EO-93-001-PP and Memorandum dated January 16, 1996). If revisions are required, OPAEA may require the package to be re-submitted for its review and approval. Once all outstanding issues have been resolved, the completed draft CEQA package can then be sent to the State Clearinghouse and public noticed for public review and comment.

At the end of the public comment period, the permit writer must evaluate any comments received from agencies or the public to determine if any changes to the Initial Study or environmental document are necessary. If no changes or minor changes are required, the package can then be finalized. A Response to Comment (RTC) package would also be required to be prepared following procedures set forth in EO-94-013-MM. If significant changes to the CEQA package are required as a result of public comment, the permit writer should consult with OPAEA to determine if the CEQA package would need to be recirculated for public review and comment. A RTC package is also required to be prepared by the permit writer in the event recirculation is necessary.

Once the final CEQA package has been completed, the permit writer must prepare a Notice of Determination (NOD). The completed NOD package is then sent to OPAEA for processing of any Fish and Game filing fees. At this point, the NOD will not be filed with the State Clearinghouse (SCH) until the permit appeal period has ended. It is the permit writer's responsibility to inform OPAEA as to whether or not an appeal was filed on a project, and the date the appeal was acted upon before OPAEA files the NOD package with the SCH. The filing of the NOD package with the SCH starts the 30 legal challenge period under CEQA.

land disposal facility; and offsite large treatment facility.

Responsible Agency-

Often, another agency may have started the CEQA process because it had primary responsibility over the project or a portion of the project at an earlier point in time. In such cases, it is important for the permit writer to contact the Lead Agency to ensure that DTSC, as a *Responsible Agency*, has an opportunity to be involved in scoping sessions, meetings or hearings concerning portions of the project DTSC would have approval authority over. Ideally, the permit writer should be involved in providing the Lead Agency with information about the project and its potential impacts so that Initial Study being prepared by the Lead Agency can be used later by DTSC for its approval action.

The permit writer should contact the local planning entity responsible for CEQA compliance to obtain a copy of the entity's draft Initial Study and environmental document to ensure that DTSC has the opportunity to review and comment on the scope and depth of the package. OPAEA maintains a tracking system for local and other state agency CEQA packages which are sent to DTSC for review and provides notice of the programs when such projects arrive. However, often the local Lead Agency may not route the package to the SCH for distribution to State agencies such as DTSC. It is recommended that the permit writer contact the local planning entity to ensure that the package will be sent to DTSC.

REQUIRED OUTPUTS

Expected outputs from this chapter are:

- Draft Initial Study
- Draft Special Initial Study (If applicable)
- Certificate of Fee Exemption (If applicable)
- If Negative Declaration:
 - draft Negative Declaration
 - Public Notice
 - Response to Comments (if applicable)
 - Final Initial Study
 - Final Negative Declaration
 - Notice of Determination
- If EIR:
 - Memorandum of Understanding
 - Statement of Work
 - Notice of Preparation
 - Scoping Session
 - Administrative draft EIR
 - draft EIR
 - Public Notice
 - Response to Comments (if applicable)
 - Notice of Completion
 - Final EIR
 - Statement of Findings
 - Statement of Overriding Considerations
 - Mitigation Monitoring/Reporting Plan
 - Notice of Determination

APPLICABLE REGULATIONS AND STATUTES

State Laws and Regulations:

- c Cal. Pub. Res. Code, section 21000 et seq (California Environmental Quality Act)
- c Title 14; Cal. Code of Regs., section 15000 et seq (State CEQA Guidelines)
- c Title 22; Cal. Code of Regs., section 66270.14(e) requires the applicant to submit with Part B portion of the permit application all information necessary to enable DTSC to prepare a CEQA Initial Study.

POLICIES

DTSC Policies:

Specific policies regarding DTSC internal compliance with CEQA are contained in DTSC Management Memorandum *Department Compliance with CEQA* and *Compliance With The Requirements of the California Environmental Quality Act* (EO-93-001-PP and Memorandum dated January 16, 1996).

All draft CEQA packages must be approved and signed by the Unit or Branch Chief and forwarded to OPAEA via formal transmittal memorandum. OPAEA is provided a 15 working day schedule to review and 1) approve the CEQA package; or 2) provide the program with comments necessary to ensure the package meets the requirements of CEQA. Comments from OPAEA must be incorporated into a revised CEQA package and, at the discretion of OPAEA, sent back to OPAEA for review and approval.

The revised CEQA package is sent to the State Clearinghouse by the permit writer, with a copy forwarded to OPAEA.

The permit writer shall coordinate with OPAEA to ensure that any comments received during the public comment period on CEQA matters are fully addressed. It is the responsibility of the permit writer to develop the final response to comment package.

INSTRUCTIONS TO APPLICANT

The applicant should be informed that DTSC will be required to comply with the provisions of CEQA and will be asked to supply information during the permit application review stage that would allow DTSC to prepare the Initial Study and accompanying environmental document. A copy of the *Workbook For Conducting Initial Studies Under The California Environmental Quality Act, October 1996* can be made available to allow the applicant to examine the information needs DTSC made have concerning their project.

The project applicant should also be informed that the Fish and Game filing fee at the time of the NOD filing will be required to be paid by the applicant, as well as costs associated with preparation of an EIR, if one is required.

[Note: Preparation of other CEQA documents such as Neg Decs, NODs, etc are absorbed by DTSC. The permit writer should discuss specific EIR billing requirements and options with the applicant]

CEQA CONSIDERATIONS

No project can be approved or carried-out unless compliance with CEQA has been demonstrated.

LEGAL CONSIDERATIONS

The Office of Legal Counsel and Criminal Investigations (OLC) is responsible for reviewing CEQA

packages to ensure that the project description and any mitigation measures are consistent with the draft permit and associated conditions. Sufficient time should be allowed for review of the CEQA package by OLC. OLC shall be responsible for contacting OPAEA and the permit writer to ensure consistency and timeliness of review and comments.

The Notice of Determination (NOD) package is required to be filed once the permit appeal process has been completed. OPAEA will not file the NOD package until the permit writer provides notification that the challenge period has expired and no appeals were filed or, in the event an appeal was filed, when resolution was reached by DTSC on the appeal.

INTERAGENCY AGREEMENTS & MOUs

DTSC has established procedures for the preparation of Environmental Impact Reports through execution of third party memorandums of understanding (MOU) (EO-97-001-PP). OPAEA is the sole contact with the Governor's Office of Planning and Research (OPR) where the State Clearinghouse (SCH) is maintained.

COORDINATION WITH OTHERS

Other DTSC Units:

It is essential that CEQA compliance be integrated early in the permitting process to avoid unnecessary delays in project approval and implementation. Early consultation with OPAEA, Public Participation Branch (PPB), and OLC is advised to coordinate a CEQA compliance strategy and schedule.

Environmental/ Legislative/ Industry Groups:

Close coordination with PPB should be established and maintained to ensure that CEQA issues from these affected groups are identified.

Other Agencies:

The permit writer should meet with affected local, state and federal agencies early in the planning process to discuss roles and jurisdiction of those agencies as they relate to the project to ensure that CEQA considerations are identified in the CEQA package.

TECHNICAL REFERENCES

Procedures for ensuring consistent CEQA application are contained in the following documents:

- c Workbook For Conducting Initial Studies Under The California Environmental Quality Act, October 1996.
- c Office of Program Audits & Environmental Analysis, Official Department Policy/Procedure Documents related to the California Environmental Quality Act, October 1997.
- c OPAEA provides scheduled training sessions on various aspects of CEQA compliance. Please consult with DTSC Training Bulletin or contact OPAEA for training dates and times.

EXAMPLES OF COMPLETED WORK PRODUCTS

Examples may be obtained by contacting OPAEA.

TIMELINE AND PLANNING

CEQA Flow Chart:

A flowchart showing the CEQA process is contained in Appendix 8.1.

Workload Standard:

The workload standard for completing CEQA related activities will vary with the complexity and scope of the project being considered for approval.

Statutory and Other Deadlines:

Included in Appendix 8.1 is a flow chart entitled Time Periods of Review of Environmental Documents which provides specific timeframes for activities conducted under CEQA. This chart is consistent with the time limits found in Cal. Code of Regs., Article 8, commencing with section 11000. In addition see Chapter 2.0, Permit Processing Time Limits.

WP File Name: 2/CH0800_P.MAN

List of Examples:

List of Appendices:

Appendix 8.0 Permit Advisory Number PA97-4, Environmental Setting and Impact Analyses Requirements.

Appendix 8.1 CEQA Process Flow Chart

List of References: